

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

Docket No.: 21 MC 100 (AKH)

IN RE: WORLD TRADE CENTER DISASTER SITE
LITIGATION

-----X

**MEMORANDUM IN RESPONSE TO SUMMARY ORDER
DIRECTING FURTHER BRIEFING**

INTRODUCTION

Worby Groner Edelman & Napoli Bern, LLP, the attorneys for the sixteen (16) Plaintiffs at issue in the City of New York's and its Contractors' ("Defendants") August 26, 2011 pending motion to dismiss for Failure to Prosecute pursuant to Federal Rule of Civil Procedure 41(b) ("Motion) hereby submit this Memorandum in response to the Court's September 20, 2011 Summary Order Directing Further Briefing.

**PLAINTIFFS' COUNSEL HAS AUTHORITY TO EXECUTE
HIPAA MEDICAL AUTHORIZATION FORMS PURSUANT
TO NY PUBLIC HEALTH LAW NY PUBLIC HEALTH
LAW §18(1)(G)**

Worby Groner Edelman & Napoli Bern, LLP has authority pursuant to NY Public Health Law §18(1)(G) to execute HIPAA Medical Record Authorization Forms on behalf of ten (10) of the sixteen (16) Plaintiffs at issue in the Defendants' pending motion. Specifically, attorneys of the firm are granted power of attorney to execute such authorizations under NY Public Health Law §18(1)(G), which specifically defines a "Qualified Person" in relevant part, as ... "[a]n attorney representing a qualified personwho holds a power of attorney from the qualified person or the subject's estate explicitly authorizing the holder to execute a written request for patient information..." Worby Groner Edelman & Napoli Bern, LLP is a "Qualified Person"

under this statute since it obtains the Power of Attorney to Execute HIPPA Medical Record Authorization Forms pursuant to NY Public Health Law §18(1)(G) on behalf of ten (10) out of the sixteen (16) Plaintiffs at issue.

The following ten (10) Plaintiffs have all signed a Power of Attorney forms specifically authorizing Worby Groner Edelman & Napoli Bern, LLP to execute HIPAA-compliant Medical Authorizations on their behalf pursuant to NY Public Health Law §18(1)(G), as amended October 26, 2004:

1. Sebastian Bartolotta (06cv14487): See Power of Attorney at Exhibit “1”;
2. Patricia Defeo (06cv08957): See Power of Attorney at Exhibit “2”;
3. Preston J. Fucci (06cv11317): See Power of Attorney at Exhibit “3”;
4. Melvin Glover (06cv13928): See Power of Attorney at Exhibit “4”;
5. Gregory Howard (06cv10780): See Power of Attorney at Exhibit “5”;
6. Charles Logan (06cv08448): See Power of Attorney at Exhibit “6”;
7. Robert Martin (07cv10012): See Power of Attorney at Exhibit “7”;
8. Mimi Netrosio (06cv11774): See Power of Attorney at Exhibit “8”;
9. Glenn O’Donnell (06cv9657): See Power of Attorney at Exhibit “9”;
10. John Ruis (06cv11264): See Power of Attorney at Exhibit “10”.

These Power of Attorney forms are widely used in litigation and are accepted by most health care providers. In fact, these Power of Attorney forms were previously used by attorneys for both the Plaintiffs and Defendants in the *In Re: World Trade Center Disaster Site Litigation*, 21 MC100 (AKH). These forms were successfully utilized to obtain the millions of pages of medical records which helped settle over ten thousand (10,000) cases in the World Trade Center Litigation Settlement Process Agreement, As Amended (“SPA”).

Additionally, Worby Groner Edelman & Napoli Bern, LLP provided Patton Boggs with the Authorization Forms that have been approved by the New York State Department of Health.¹ (A copy of the form is attached to this letter for the Court's information as Exhibit "11"). As can be seen on the sample provided, below the signature line, this form can be signed by the patient or representative authorized by law. Furthermore, NY Public Health Law §18(3)(H) states, "Where the written request for patient information under this section is signed by the holder of the power of attorney, a copy of the power of attorney shall be attached to the written request. A written request under this subdivision shall be subject to the duration and terms of the power of attorney." Worby Groner Edelman & Napoli Bern, LLP provided copies these Power of Attorney Forms to the Defendants along with copies of the signed Authorization Forms pursuant to New York Law.

CONCLUSION

As a result of the forgoing we respectfully ask this Court to deny the Defendants' motion or, at the very least, to hold the Defendants' motion in abeyance until after January 2, 2011 so as to allow these sixteen Plaintiffs the same opportunity and time to determine whether they will continue their litigations or seek VCF benefits under the Zadroga Act. Additionally, properly-executed HIPAA-complaint authorizations under New York Law have already been provided to the Defendants on behalf of ten (10) of the Plaintiffs at issue.

¹ The form can be found on the New York State Court's website at:
http://www.nycourts.gov/forms/hipaa_fillable.pdf.

Dated: September 27, 2011

/s/
Christopher R. LoPalo (CL-6466)
Worby Groner Edelman & Napoli Bern, LLP
350 Fifth Avenue, Suite 7413
New York, New York 10118
(212) 267-3700 – phone
(212) 267-3700 – fax
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IN RE WORLD TRADE CENTER DISASTER : 21 MC 100 (AKH)
SITE LITIGATION :
-----x

DECLARATION OF SERVICE

Christopher R. LoPalo, an attorney duly licensed to practice before the Courts of the State of New York, hereby declares that on September 27, 2011, I served the within documents and its Exhibits upon all counsel of record through the Court's Electronic Filing system.

September 27, 2011

/s/ Christopher R. LoPalo
Christopher R. LoPalo (CL-6466)
Worby Groner Edelman & Napoli Bern, LLP
350 Fifth Avenue, Suite 7413
New York, New York 10118
(212) 267-3700